

Government of the District of Columbia

ZONING COMMISSION



Z.C. ORDER NO. 609-A
Case No. 88-7
(DOWNTOWN SHOP
Text and Map Amendments)
October 16, 1989

This Order addresses several remaining issues in this case, which the Zoning Commission initiated in 1988 to consider amendments to the Zoning Regulations to further certain development policies and land use objectives of the Comprehensive Plan that apply to the Downtown retail core of the District. A hearing on the initial proposal was conducted by the Zoning Commission on June 23, August 1, and September 8, 1988. By Order No. 609, which was published in the D.C. Register on March 31, 1989, the Commission adopted a new Chapter 17 of Title 11, DCMR, ("Zoning").

In part, this Order addresses several issues that the Commission considered at its meeting on March 13, 1989, when it approved Order No. 609. At that time the Commission took proposed action to: (1) correct the references in 11 DCMR 1701.1(b) to certain lots that are to be included in the SHOP District; (2) provide definitions of the terms "net leasable area" and "gross leasable area;" and (3) to provide an administrative waiver process for a portion of the required floor area for preferred uses.

Notice of proposed rulemaking on these matters was published in the D.C. Register on March 31, 1989. No comments were submitted during the comment period that closed on May 1, 1989.

In addition to the foregoing matters, this Order addresses: (1) the mapping of the receiving zones that are provided for, but are not mapped, by 11 DCMR 1705; and (2) to add paragraphs (d) and (e) to 11 DCMR 1705.2, to preclude the transfer of development rights to the site of a previously approved planned unit development ("PUD"), and to regulate the height of a receiving building that abuts a more restrictive zone.

A hearing on these issues was conducted on March 20, 1989. Issues presented at the public hearing are discussed below:

- (1) The total area and available sites within the proposed receiving zones are too limited to provide an effective transfer of rights market. The area should be expanded by including all C-3-B, C-3-C, and C-4 zone districts, and that portion of the SP District within the Central Employment Area;
- (2) The bonuses should be higher; and
- (3) The transferred rights will not be as valuable outside the SHOP District as they would be within it.

The Commission recognizes that the capacity of the receiving zones is limited. Nonetheless, the Commission is persuaded that the SHOP District itself, together with the receiving zones that are mapped by this Order, provides a reasonable opportunity for the use of bonus floor area. Experience will provide a sound basis for evaluating the entire process, including the appropriate extent and location of receiving capacity.

A notice of proposed rulemaking to amend 11 DCMR 1705.2, and to map the receiving zones was published in the D.C. Register on September 1, 1989.

By letters dated October 3, 1989, comments were submitted on behalf of the Washington Development Group, and Tobishima Atlantic about the operation of 11 DCMR 1705.2(e) and DCMR 1705.7, and the apparent inclusion in the Downtown East Receiving Zone of the development site that is before the Zoning Commission in Case No. 89-19C.

By comments dated September 29, 1989, Mark N. Mallus, a real estate broker, supported the adoption of rules to allow the transfer of development rights, but urged the adoption of provisions that vest the use of transferred rights and that clearly document the transfers.

The Commission addresses the comments below:

- (1) As adopted, 11 DCMR 1705.2(e), 1705.6, and 1705.7 have been amended to provide clearly that the limitations apply only to a receiving building, and not to matter-of-right construction.
- (2) As adopted, 11 DCMR 1705.3 and 1705.4 have been amended to identify clearly the area that is within each receiving zone. The amendments make it clear that the site of the air rights project of the Washington Development Group, over I-395, is not within the Downtown East receiving zone.

- (3) The issues presented by Mr. Mallus merit attention, but are beyond the scope of the public hearing notice and the notice of proposed rulemaking. For that reason, the Commission is not able to act upon those issues in this final order. The Commission has requested the Zoning Secretariat to prepare a proposed amendment that would address these issues.

By letter dated September 6, 1989, all of the proposed amendments were referred to the National Capital Planning Commission ("NCPC") for review and comments pursuant to D.C. Code Sec. 5-417 (1988). By letter dated October 11, 1989, NCPC reported that the proposed amendments would have no adverse impact on the federal establishment or other federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital.

The Zoning Commission believes that the proposed amendments to the Zoning Regulations are in the best interest of the District of Columbia, are consistent with the intent and purpose of the Zoning Regulations and Zoning Act, are not inconsistent with the Comprehensive Plan for the National Capital, and will appropriately implement and advance the objectives and policies established in the Comprehensive Plan.

In consideration of the reasons set further herein, the Zoning Commission hereby orders APPROVAL of amendments to the Zoning Regulations to further implement the Downtown SHOP Overlay Zone District. The specific amendments to the Zoning Regulations are as follows:

1. Amend the reference in section 1701.1(b) to "Square 224 (Lot 24)" to read "Square 224 (Lot 824)";
2. Amend the reference in Section 1701.1(b) to Square 254 to exclude that portion of Lot 835 which is north of the eastern extension of the southern boundary of Lot 53;
3. Add the following paragraphs (f) and (g) to subsection 1710.1, to provide definitions of the terms "net leasable area" and "gross leasable area":

- (f) Net leasable area - the sum of the floor area occupied by the business or use, as measured from the interior faces of the walls encompassing the space, and excluding any portion of the space devoted to mechanical equipment, lobby areas, stairways, or elevators, if that portion of space serves the building as a whole.

- (g) Gross leasable area - the sum of the floor area occupied by the business or use, as measured from the exterior faces of the walls encompassing the space, and including any stairways, elevator shafts, escalators, or mechanical areas inside the perimeter walls of the business use. In a building occupied by multiple tenants or multiple uses, the central elevator core or cores, associated lobbies, stairways, and mechanical areas shall be excluded from gross leasable area, if they serve the building as a whole.

- 4. Provide for limited waivers of the requirements of chapter 17 to be approved as a matter-of-right, by adopting a new section 1707 to read as follows:

1707 WAIVERS

- 1707.1 The Zoning Administrator may waive 20 percent of the FAR required for preferred uses pursuant to section 1701, subject to the following conditions:
 - (a) Before approving the waiver, the Zoning Administrator shall submit the application to the Director of the Office of Planning for review and a report;
 - (b) Except as provided in Paragraph (c) of this sub-section, The Director shall report to the Zoning Administrator within thirty (30) days after the Zoning Administrator submits the application to the Director;
 - (c) The applicant, The Zoning Administrator, and the Director may agree to establish a longer or shorter period for the report of the Director;
 - (d) The Director may not delegate the authority to report to the Zoning Administrator pursuant to this section;
 - (e) The Zoning Administrator may not waive any portion of the required FAR unless the Director recommends in favor of a waiver;
 - (f) The waiver shall be reasonably necessary to allow a project which will further the purposes of this chapter;
 - (g) The Zoning Administrator may waive less than 20 percent of the required FAR; and

- (h) The Zoning Administrator shall report timely to the Zoning Commission after having approved a waiver pursuant to this section, and shall transmit with the report a copy of the report of the Director of the Office of Planning.

5. Redesignate Sections 1707 through 1710 consistently as 1708 through 1711.

6. Revise 11 DCMR 1705 (36 DCR 2301; March 31, 1989) to read as follows:

1705 TRANSFERABLE DEVELOPMENT RIGHTS

1705.1 The combined lot development provisions of Section 1704 of this chapter may be used to transfer bonus floor area from a project within the SHOP District to a receiving lot or lots located in the Downtown East or New Downtown receiving zones pursuant to the provisions of this section.

1705.2 Gross floor area transferred from historic buildings within the SHOP District to a receiving zone shall be governed by the following additional provisions:

- (a) The preserved building or part thereof shall be a designated historic landmark or shall be a building that is within the Downtown Historic District or the Pennsylvania Avenue Historic site, and which has been preserved in whole or in part pursuant to D.C. Law 2-144 and regulations and procedures pursuant thereto;
- (b) Undeveloped floor area ratio of up to 4.0 may be transferred from the historic, sending lot to a lot or lots elsewhere in the SHOP District or in a receiving zone; provided, that each square foot of unused gross floor area less than the matter-of-right density of the sending lot shall earn two square feet of transferable development rights;
- (c) Excess floor area devoted to preferred uses in the building on the historic, sending lot may be transferred off-site, in addition to the unused density specified in paragraph (b), at a 1:1 ratio for uses that are set forth in Section 1707, and a 1:2 ratio for uses that are set forth in Section 1708;

- (d) Development rights may not be transferred to a lot that is within the site of a Planned Unit Development approved pursuant to Chapter 24 of this title; and
 - (e) If the height of a receiving building exceeds the height that the provisions of this title allow as a matter-of-right for a building located on an abutting lot, including a lot that is separated from the receiving lot by an alley, no part of the receiving building shall project above a plane drawn at a forty-five (45) degree angle from a line that is:
 - (1) Directly above the zone district boundary line between such abutting lot and the receiving lot; and
 - (2) Above such boundary line by the distance of the matter-of-right height that this title allows for such abutting lot.
- 1705.3 The Downtown East receiving zone consists of the C-3-C and HR/C-3-C zoned portions of Squares numbered 565, 567, 569 through 574, 625, 626, and 628 through 631.
- 1705.4 The New Downtown receiving zone consists of the C-3-C zoned portions of Squares numbered 72 through 74, 76, 78, 85, 86, 99, 100, and 116 through 118.
- 1705.5 In the New Downtown receiving zone, the maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings, June 1, 1910, as amended; and the maximum permitted floor area ratio shall be 10.0 for buildings permitted a height of 130 feet, and 9.0 for buildings permitted a lesser height.
- 1705.6 In the New Downtown receiving zone, the height of a receiving building may not be measured from a point that fronts on New Hampshire Avenue.
- 1705.7 In the Downtown East receiving zone, the maximum permitted height of a receiving building shall be one hundred and ten (110) feet, and the maximum permitted floor area ratio shall be 9.0.
7. Amend the Zoning Map of the District of Columbia by including the C-3-C and HR/C-3-C zoned portions of Squares numbered 565, 567, 569 through 574, 625, 626,

and 628 through 631 in the Downtown East receiving zone.

8. Amend the Zoning Map of the District of Columbia by including the C-3-C zoned portions of Squares numbered 72 through 74, 76, 78, 85, 86, 99, 100, and 116 through 118 in the New Downtown receiving zone.

Vote of the Zoning Commission at the meeting on March 13, 1989, to approve amendments numbered 1 through 5: 4-0 (Maybelle Taylor Bennett, John G. Parsons and Lindsley Williams to approve; George M. White to approve by proxy, and Lloyd D. Smith not voting, not having participated in the related hearing).


Vote of the Zoning Commission at the meeting on May 8, 1989, to approve amendments numbered 6 through 8: 4-0 (Maybelle Taylor Bennett, Lloyd D. Smith, George M. White and Lindsley Williams to approve; John G. Parsons not voting, not present and not having participated in the related hearing).

This Order was revised and approved by the Zoning Commission at the public meeting on October 16, 1989, by a vote of 3-0 (Maybelle Taylor Bennett to approve the entire Order; George M. White to approve the entire Order by proxy vote; John G. Parsons to approve amendments numbered 1 through 5 and the related portions of the statement of reasons; Lloyd D. Smith to approve amendments numbered 6 through 8 and the related portions of the statement of reasons; John G. Parsons not voting on amendments numbered 6 through 8 and the related portions of the statement of reasons, not having participated in the related hearing; Lloyd D. Smith not voting on amendments numbered 1 through 5 and the related portions of the statement of reasons, not having participated in the related hearing).

In accordance with the 11 DCMR 3028, this Order is final and effective upon publication in the D.C. Register, that is, on

NOV 10 1989


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


EDWARD L. CURRY
Executive Director
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